REMARKS

This Amendment is responsive to the Office Action dated October 26, 2009. Applicant has amended claim 25 and added new claim 26. Applicant has also canceled claims 22–24, which were previously withdrawn as being directed to a nonelected invention. Claims 18–21, 25 and 26 are pending.

In view of the above amendments and the following remarks, Applicant requests reconsideration and withdrawal of the rejections set forth in the Office Action.

Claim Rejection Under 35 U.S.C. § 112, First Paragraph

In the Office Action, claims 18–21 and 25 were under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. While Applicant continues to disagree with this rejection for at least the reasons presented in the Amendment filed May 11, 2009, Applicant has amended claim 25 to expedite prosecution of the application. In particular, Applicant has amended claim 25 to recite, in part, collecting data relating to a percent of time in mode switch, an R-wave amplitude, a P-wave amplitude, a reversion pace count, and a time from implant. In this way, amended claim 25 requires gathering of all the types of data the Examiner asserts Applicant's specification requires.

Applicant has removed from claim 25 recitation of collecting data relating to a refractory sense count and a high rate episode count, and moved recitation of these data types to claim 26. As discussed in the Amendment filed May 11, 2009, Applicant's specification provides clear support that collection of data relating to a refractory sense count and a high rate episode count and use of such data in the algorithm having a set of weighted sum rules are optional.[1]

For at least these reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 18–21 and 25 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Despite the amendment to expedite prosecution of the application, Applicant reserves the right to re-present any originally filed, previously presented, cancelled, and/or previously unclaimed subject matter in a subsequently filed continuing application without prejudice or disclaimer.

[1] *See, e.g.*, Applicant's Originally Filed Application, p. 12, l. 25 to p. 13, l. 9.

Rejection for Obviousness-type Double Patenting:

In the Office Action, claims 18–21 and 25 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1–13 of U.S. Patent No. 6,721,600.

A Terminal Disclaimer accompanies this Amendment. The disclaimer is made to expedite issuance and is not intended as an admission that any claim of the present application is the same or an obvious variant of those of U.S. Patent No. 6,721,600. This disclaimer obviates the double patenting rejection and places claims 17–21, 25 and 26 in a condition for allowance.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: 1-22-10

By: _____

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